

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

Brady Bennett,

Plaintiff,

v.

**J&C Energy Enterprises, LLC d/b/a
Energy Solutions Direct, LLC,**

Defendant.

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Civil Action No.

1:21-cv-148

Jury Trial Demanded

COMPLAINT

Brady Bennett (Plaintiff), by and through his attorneys, **Kimmel & Silverman, P.C.**, alleges the following against **J&C Energy Enterprises d/b/a Energy Solutions Direct, LLC** (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227, *et seq.* and § 302.101 of the Texas Business & Commercial Code.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

3. Supplemental jurisdiction for Plaintiff's related state law claims arises under 28 U.S.C. §1367.

27. Defendant's calls to Plaintiff's cellular telephone were without any prior express consent.

28. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do Not Call Registry since November 8, 2008.

29. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

30. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

31. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

32. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

33. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered his or his telephone number on the National Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. 47 U.S.C. § 227(c).

34. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do Not Call Registry since November 8, 2008.

1 35. Defendant called Plaintiff on multiple occasions during a single calendar year
2 despite Plaintiff's registration on the Do Not Call list.

3 36. Defendant's acts as described above were done with malicious, intentional,
4 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
5 purpose of harassing Plaintiff.

6 37. The acts and/or omissions of Defendant were done unfairly, unlawfully,
7 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
8 defense, legal justification or legal excuse.

9 38. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
10 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
11 damages.

12
13 **COUNT III**
14 **DEFENDANT VIOLATED § 302.101 of**
15 **THE TEXAS BUSINESS & COMMERCIAL CODE**

16 39. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
17 at length herein.

18 40. Plaintiff received all calls from Defendant in Texas and is entitled to other relief
19 under Texas law.

20 41. §302.101 of the Texas Business & Commerce Code prohibits sellers from
21 engaging in telephone solicitation from a location in this state or to a purchaser located in this
22 state unless the seller obtains a registration certificate from the Office of the Secretary of State
23 for the business location from which the solicitation is made.
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42. Defendant violated § 302.101 of the Texas Business & Commercial Code when its representatives engaged in continuous and repetitive telephone solicitation of Plaintiff without obtaining a registration certificate from the Office of the Secretary of State.

43. §302.302(a) of the Texas Business & Commerce Code provides that a person who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation. Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover all reasonable cost of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney fees.

Wherefore, Plaintiff, **Brady Bennett**, respectfully prays for judgment as follows:

- a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. § 227(b)(3)(A)) and §302.302 of the Texas Business and Commerce Code;
- b. Statutory damages of \$500.00 per violative telephone call (as provided under 47 U.S.C. § 227(b)(3)(B));
- c. Additional statutory damages of \$500.00 per violative telephone call (as provided under 47 U.S.C. § 227(C);
- d. Treble damages of \$1,500.00 per violative telephone call (as provided under 47 U.S.C. § 227(b)(3));
- e. Additional treble damages of \$1,500.00 per violative telephone call (as provided under 47 U.S.C. § 227(C);
- f. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c); and
- g. Any other relief this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, **Brady Bennett**, demands a jury trial in this case.

Respectfully submitted,

Dated: 02/12/2021

By: /s/ Amy L. Bennecoff Ginsburg
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